

THE HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

ALLENMORE MEDICAL INVESTORS,  
LLC, a Washington limited liability  
company,

Plaintiff,

v.

THE CITY OF TACOMA,  
WASHINGTON, a municipal corporation;  
MARILYN STRICKLAND, an individual;  
LAUREN WALKER, an individual; RYAN  
MELLO, an individual; JAKE FEY, an  
individual; VICTORIA WOODARDS, an  
individual; MARTY CAMPBELL, an  
individual; DAVID BOE, an individual;;  
and JOHN DOE 1-20,

Defendants.

NO. 3:14-cv-05717-RBL

DEFENDANTS' ANSWER TO  
FIRST AMENDED COMPLAINT

COMES NOW Defendants City of Tacoma, Marilyn Strickland, Lauren Walker, Ryan Mello, Jake Fey, Victoria Woodards, Marty Campbell and David Boe, by and through their undersigned attorneys, and by way of answer to Plaintiff's First Amended Complaint admit, deny, and allege as follows:

## **I. PARTIES**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

1. In answer to paragraph 1 of Plaintiff's First Amended Complaint, on information and belief, these defendants admit that Allenmore Medical Investors, LLC (AMI) is a limited liability company registered with the Washington Secretary of State. As to all other allegations contained in this paragraph, these defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained herein, and therefore deny the same.

2. In answer to paragraph 2 of Plaintiff's First Amended Complaint, these defendants admit the same.

3. In answer to paragraph 3 of Plaintiff's First Amended Complaint, these defendants admit the same.

4. In answer to paragraph 4 of Plaintiff's First Amended Complaint, these defendants admit the same.

5. In answer to paragraph 5 of Plaintiff's First Amended Complaint, these defendants admit the same.

6. In answer to paragraph 6 of Plaintiff's First Amended Complaint these defendants admit the same.

7. In answer to paragraph 7 of Plaintiff's First Amended Complaint, these defendants admit the same.

8. In answer to paragraph 8 of Plaintiff's First Amended Complaint, these defendants admit the same.

1           9.     In answer to paragraph 9 of Plaintiff's First Amended Complaint,  
2 these defendants admit the same.

3           10.    In answer to paragraph 10 of Plaintiff's First Amended Complaint,  
4 these defendants are without knowledge or information sufficient to form a  
5 belief as to the truth of the allegations contained herein, and therefore deny the  
6 same.

7                                   **II. JURISDICTION AND VENUE**

8           11.    In answer to paragraph 11 of Plaintiff's First Amended Complaint,  
9 these defendants admit the same.

10          12.    In answer to paragraph 12 of Plaintiff's First Amended Complaint,  
11 these defendants admit the same.

12                                   **III. FACTS COMMON TO ALL CLAIMS**

13          13.    In answer to paragraph 13 of Plaintiff's First Amended Complaint,  
14 on information and belief, these defendants admit the allegations concerning  
15 the location and size of the Elks property. As to all other allegations contained  
16 in this paragraph, these defendants are without knowledge or information  
17 sufficient to form a belief as to the truth of the allegations contained herein, and  
18 therefore deny the same.

19          14.    In answer to paragraph 14 of Plaintiff's First Amended Complaint,  
20 these defendants admit, on information and belief, that JLO Washington  
21 Enterprises, Inc. (JLO) is a Washington corporation and further admit, on  
22 information and belief, that an "Assignment of Buyer's Interest in Purchase and  
23 Sale Agreement" was recorded with the Pierce County Auditor on June 14,  
24  
25  
26

1 2011, under number 201106140566, and that the Grantor on this document is  
2 JLO Washington Enterprises, Inc. and the Grantee is Allenmore Medical  
3 Investors, LLC (AMI), with Jeffrey Oliphant signing on behalf of both Grantor  
4 and Grantee. As to all other allegations contained in this paragraph, these  
5 defendants are without knowledge or information sufficient to form a belief as to  
6 the truth of the allegations contained herein, and therefore deny the same.

7 15. In answer to paragraph 15 of Plaintiff's First Amended Complaint,  
8 these defendants admit that a State Environmental Protection Act ("SEPA")  
9 application and a building (grade and fill) permit application were filed with the  
10 City of Tacoma, including all required studies and backup to support the  
11 applications, in December 2010. These defendants deny that JLO Washington  
12 Enterprises filed the application for the grade and fill permit. These defendants  
13 also admit that the primary development project described in the SEPA  
14 application consisted of a medical and related professional office campus  
15 including up to 760,000 square feet of medical and professional office space, a  
16 hospital and retail space. These defendants deny that the SEPA application  
17 also included an alternate project consisting of 155,000 square feet of retail  
18 space and 200,000 square feet of medical and professional office space.  
19 These defendants admit that on or about March 23, 2011, the City of Tacoma  
20 issued a Mitigated Determination of Non-Significance. These defendants admit  
21 that on or about July 27, 2011, the City of Tacoma issued Building Permit  
22 (grade and fill permit) (BLD2010-40000156353), but deny that the Final  
23  
24  
25  
26

1 Mitigated Determination of Non-Significance (SEP2010-40000156354) was  
2 issued on that date.

3 16. In answer to paragraph 16 of Plaintiff's First Amended Complaint,  
4 these defendants are without knowledge or information sufficient to form a  
5 belief as to the truth of the allegations contained herein, and therefore deny the  
6 same.

7 17. In answer to paragraph 17 of Plaintiff's First Amended Complaint,  
8 these defendants are without knowledge or information sufficient to form a  
9 belief as to the truth of the allegations as to the medical services provider's  
10 decision, or JLO's review of possible alternative uses of the property, or the  
11 requirements for convenient access for originally envisioned or alternative  
12 development projects, and therefore deny such allegations. These defendants  
13 deny that City of Tacoma officials recommended adding a U-Turn for  
14 southbound Union Avenue traffic to improve accessibility. These defendants  
15 admit that AMI commissioned an engineering study and report requested by  
16 City officials. These defendants also admit that City officials reviewed the  
17 report and placed the proposed U-Turn on the docket for the City Council's  
18 Environment and Public Works (EPW) Committee on August 24, 2011, and  
19 recommended approval. These defendants deny that the August 24, 2011,  
20 meeting of the EPW Committee was a hearing. These defendants admit that  
21 Councilmembers at that meeting posed questions related to the proposed U-  
22 Turn and requested information on whether the proposed development of the  
23 Elks Lodge Property included a "big box" retailer. These defendants also admit  
24  
25  
26

1 that the proposed U-Turn did not receive a "do pass" recommendation from the  
2 EPW Committee. These defendants deny that such action was irrational,  
3 arbitrary or capricious, failed to serve a legitimate governmental purpose, or  
4 was done for an improper purpose. These defendants admit that Ordinance  
5 No. 28013, amending Chapter 11.05 of the Municipal Code, to allow U-Turns at  
6 the intersection of South 23rd Street and Union Avenue, was placed on the  
7 agenda for the August 30, 2011 Council meeting.

8 18. In answer to paragraph 18 of Plaintiff's First Amended Complaint,  
9 these defendants admit that on August 30, 2011, certain members of the  
10 Tacoma City Council attended a Joint Study Session with members of Public  
11 Utility Board that included a bus ride to the Cowlitz Salmon Hatchery. These  
12 defendants also admit that the agenda for the Study Session did not include  
13 any item relating to a moratorium on development or building activity in the City  
14 of Tacoma, any item relating to proposed development at 1965 South Union  
15 Avenue, or any item relating to the U-Turn proposal. These defendants admit  
16 that during the August 30, 2011 Study Session and/or bus ride, one-on-one or  
17 one-on-two discussions regarding a possible moratorium occurred, (as did  
18 discussions about the proposed development at 1965 South Union Avenue),  
19 but deny that the U-Turn proposal was discussed and further deny that a  
20 majority of the Council collectively decided to present and adopt the moratorium  
21 at the City Council meeting later that day, and to remove the U-Turn proposal  
22 from the meeting docket. These defendants deny any violation of the Open  
23 Public Meeting Act and deny any improper purpose by these defendants.  
24  
25  
26

1           19. In answer to paragraph 19 of Plaintiff's First Amended Complaint,  
2 these defendants admit that at the regularly scheduled August 30, 2011,  
3 meeting of the Tacoma City Council, a motion was made and adopted to  
4 suspend the rules to consider the first and final reading of an additional  
5 ordinance, Ordinance No. 28014, after the regular agenda. The defendants  
6 further admit that Ordinance No. 28014, as amended by motion, was passed by  
7 the City Council. The defendants also admit that the proposed ordinance would  
8 impose an immediate six month moratorium on the acceptance of applications  
9 for new building or other development permits for retail establishments in  
10 excess of 65,000 square feet in aggregate. The defendants further admit that  
11 defendant Mayor Strickland and City Council Members Walker, Mello, Fey,  
12 Woodards, Campbell and Boe voted in favor of Ordinance No. 28014. The  
13 defendants further admit that the U-Turn proposal was removed from the  
14 agenda for that meeting, pursuant to a motion that was made and adopted  
15 during the meeting.  
16

17           20. In answer to paragraph 20 of Plaintiff's First Amended Complaint,  
18 these defendants deny the same.

19           21. In answer to paragraph 21 of Plaintiff's First Amended Complaint,  
20 these defendants admit that neither the SEPA application nor the building  
21 permit identified the anchor merchant for the proposed project, although rumor  
22 as of August 2011 had identified Wal-Mart as the likely anchor merchant. On  
23 information and belief, these defendants admit that the Central Neighborhood  
24 Council had stated that it strongly opposed allowing a Wal-Mart store in  
25  
26

1 Tacoma. These defendants also admit that at the time the Moratorium was  
2 proposed and adopted defendants Strickland, Walker, Mello, Fey, Woodards,  
3 Campbell and Boe believed that the likely anchor merchant for the proposed  
4 development at the Elks Lodge Property was Wal-Mart. These defendants  
5 deny that the developer for this site was AMI or that the defendants had any  
6 knowledge of AMI and its alleged involvement. As to all remaining allegations  
7 contained herein, the defendants are without knowledge or information  
8 sufficient to form a belief as to the truth of said allegations and therefore, deny  
9 the same.

10 22. In answer to paragraph 22 of Plaintiff's First Amended Complaint,  
11 these defendants admit the same.

12 23. In answer to paragraph 23 of Plaintiff's First Amended Complaint,  
13 these defendants admit that on August 31, 2011, BCRA, on behalf of Walmart  
14 filed an application for a building permit (No. 40000168923) with the City of  
15 Tacoma along with related documents and plans to construct a new retail store  
16 of approximately 152,243 square feet on the Elks Lodge Property. The  
17 defendants deny that BCRA was also acting as agent for AMI when it filed the  
18 building permit application. These defendants are without knowledge or  
19 information sufficient to form a belief as to the truth of the allegation that AMI  
20 was acquiring the Elks Lodge Property, and therefore deny the same. The  
21 defendants admit that the building permit application filed by BCRA on behalf of  
22 Walmart touched all parts of the Elks Lodge property at 1965 Union Avenue,  
23  
24  
25  
26



1 including that outpads that were apparently slated for later development. The  
2 defendants admit that AMI paid the Building Permit Application fee.

3 24. In answer to paragraph 14 of Plaintiff's First Amended Complaint,  
4 these defendants admit that the Building Permit Application was "complete" for  
5 purposes of RCW 19.27.095 when filed on August 31, 2011. These defendants  
6 assert that the determination of "completeness" under the Revised Code of  
7 Washington does not preclude the City, pursuant to TMC 13,05.010.E, from  
8 requesting additional information. These defendants admit that Walmart's  
9 rights to a building permit under the laws and ordinances in effect on August 31,  
10 2011 were vested on that date. The defendants deny that AMI had vested  
11 rights, or any recognized property interest, in the building permit application  
12 filed by BCRA, on behalf of Walmart.

13 25. In answer to paragraph 25 of Plaintiff's First Amended Complaint,  
14 these defendants admit that on September 16, 2011, the City advised that the  
15 Building Permit Application was complete and vested to the codes in effect as  
16 of August 31, 2011, and contained sufficient information for review to  
17 commence. The City admits that it advised the applicant, BCRA on behalf of  
18 Walmart, that it had commenced a preliminary review that noted that the plat  
19 configuration did not accurately reflect the existing parcel configuration, and  
20 that, because of the Moratorium, the City could not accept an application for a  
21 boundary line adjustment or other plat-related submittal to change the lot  
22 configuration, and that the Building Permit Application was being placed on  
23 hold. These defendants deny that this action was irrational, arbitrary or  
24  
25  
26

1 capricious, contrary to law, failed to serve a legitimate governmental purpose,  
2 or were done for an improper purpose, deny that it was an attempt to delay or  
3 prevent a lawful development project from proceeding and further deny that the  
4 defendants used improper means to accomplish any improper purpose.

5 26. In answer to paragraph 26 of Plaintiff's First Amended Complaint,  
6 these defendants admit that, on or about September 27, 2011, AMI filed an  
7 application for a Boundary Line Adjustment ("BLA") relating to the Building  
8 Permit Application and that the BLA application met the requirements of TMC  
9 13.04.085. These defendants deny that the BLA application satisfied all  
10 applicable legal requirements because the Moratorium precluded the City from  
11 processing the application. These defendants deny that the City refused to  
12 accept the BLA application for filing, but admit that the City was unable to  
13 process the application because of the Moratorium. As to all other allegations  
14 contained in this paragraph, these defendants deny the same.  
15

16 27. In answer to paragraph 27 of Plaintiff's First Amended Complaint,  
17 these defendants admit that AMI sent a letter to the City on or about September  
18 207, 2011, alleging that the hold on the BLA application would result in  
19 damages to AMI.

20 28. In answer to paragraph 28 of Plaintiff's First Amended Complaint,  
21 these defendants admit that, on or about September 29, 2011, AMI requested  
22 reconsideration of the City's decision to place Walmart's building permit on  
23 hold. The defendants deny that on that date, AMI requested reconsideration of  
24 the City's decision to place AMI's application for a BLA on hold.  
25  
26

1           29. In answer to paragraph 29 of Plaintiff's First Amended Complaint,  
2 these defendants admit that by letter to counsel for AMI dated October 7, 2011,  
3 the City stated its decision to refuse to accept AMI's Boundary Line Adjustment  
4 "due to the City's moratorium on all land use permit applications for retail  
5 facilities in excess of 65,000 square feet". The defendants further admit that the  
6 portion of that letter quoted in this paragraph of plaintiff's First Amended  
7 Complaint is accurate. As to all other allegations contained in this paragraph,  
8 these defendants deny the same.

9           30. In answer to paragraph 30 of Plaintiff's First Amended Complaint,  
10 these defendants admit that, on or about October 14, 2011, AMI filed a Notice  
11 of Appeal to the Hearing Examiner, appealing the City's position that the  
12 building permit did not conform to the existing parcel configuration and that the  
13 Moratorium prevented the City from processing the BLA application. The  
14 defendants further admit that on or about October 21, 2011, AMI filed a second  
15 Notice of Appeal to the Hearing Examiner, appealing the City's position that the  
16 Moratorium precluded the City from processing the BLA application submitted  
17 by AMI.

18           31. In answer to paragraph 31 of Plaintiff's First Amended Complaint,  
19 these defendants admit that at the October 25, 2011, City Council meeting, City  
20 Council Member Lonergan moved to exclude BLAs from the effect of the  
21 Moratorium, and that the motion was seconded, and further admit that the  
22 motion was tabled to the following week's meeting after discussion. These  
23 defendants also admit that Council Member Lonergan commented that the City  
24  
25  
26

1 Council had heard that a big box retailer was going in to the Elks Lodge  
2 Property and got really upset to the point of passing the Moratorium. These  
3 defendants also admit that Council Member Manthou commented that the  
4 Moratorium would not have been enacted if it were someone other than Wal-  
5 Mart coming in.

6 32. In answer to paragraph 32 of Plaintiff's First Amended Complaint,  
7 these defendants admit that at the City council meeting held on November 1,  
8 2011, the Council voted to modify the Moratorium. These defendants also  
9 admit that this modification was embodied in Substitute Ordinance No. 28027,  
10 which took effect on or about November 11, 2011.

11 33. In answer to paragraph 33 of Plaintiff's First Amended Complaint,  
12 these defendants deny that the BLA was approved on November 14, 2011, but  
13 admit that it was recorded on December 27, 2011.

14 34. In answer to paragraph 34 of Plaintiff's First Amended Complaint,  
15 these defendants deny the same.

16 35. In answer to paragraph 35 of Plaintiff's First Amended Complaint,  
17 these defendants admit the same.

18 36. In answer to paragraph 36 of Plaintiff's First Amended Complaint,  
19 these defendants admit that BCRA was advised on or about February 3, 2012,  
20 that the building permit was close to being ready for issuance but that it would  
21 need to comply with the setback required in TMC 13.06.300.F, but deny that  
22 seeking compliance with existing Code provisions constitutes "newly imposed  
23  
24  
25  
26

1 conditions." As to all other allegations contained in this paragraph, these  
2 defendants deny the same.

3 37. In answer to paragraph 37 of Plaintiff's First Amended Complaint,  
4 these defendants admit that on or about March 12, 2012, the City found a way  
5 to proceed with issuance of the building permit and still comply with the  
6 applicable code provisions. The defendants deny that there were any "newly  
7 imposed conditions," as all such conditions were set out in the Tacoma  
8 Municipal Code. These defendants further deny that the City issued permits to  
9 AMI for Lots 2-5 at the same time as it issued the building permit to Walmart.

10 38. In answer to paragraph 38 of Plaintiff's First Amended Complaint,  
11 these defendants these defendants are without knowledge or information  
12 sufficient to form a belief as to the truth of the allegations contained herein, and  
13 therefore deny the same.

14 39. In answer to paragraph 39 of Plaintiff's First Amended Complaint,  
15 these defendants deny the same.

16 40. In answer to paragraph 40 of Plaintiff's First Amended Complaint,  
17 these defendants deny any wrongful acts by these defendants. These  
18 defendants assert that the remainder of this paragraph contains only legal  
19 assertions to which no response is necessary. Should a responsive pleading  
20 be deemed required, these defendants deny the same.

21 41. In answer to paragraph 41 of Plaintiff's First Amended Complaint,  
22 these defendants admit the same.

#### IV. CLAIMS FOR RELIEF

##### FIRST CLAIM; VIOLATION OF 42 U.S.C. § 1983

(Deprivation of Plaintiff's Federal Constitutional Rights)

42. In answer to paragraph 42 of Plaintiff's First Amended Complaint, these defendants the defendants reallege and incorporate each and every answer, allegation and denial set forth in paragraphs 1-41 above.

43. In answer to paragraph 43 of Plaintiff's First Amended Complaint, these defendants assert that this paragraph is conclusory and contains only legal conclusions to which a responsive pleading is not required. The defendants deny that AMI had any protected property interest and deny that AMI was deprived of any such interest.

44. In answer to paragraph 44 of Plaintiff's First Amended Complaint, these defendants deny that AMI had any protected property interest and deny that AMI was deprived of any such interest.

45. In answer to paragraph 45 of Plaintiff's First Amended Complaint, these defendants deny the same.

46. In answer to paragraph 46 of Plaintiff's First Amended Complaint, these defendants deny the same.

47. In answer to paragraph 47 of Plaintiff's First Amended Complaint, these defendants deny the same.

48. In answer to paragraph 48 of Plaintiff's First Amended Complaint, these defendants deny the same.

1           49. In answer to paragraph 49 of Plaintiff's First Amended Complaint,  
2 these defendants deny the same.

3           50. In answer to paragraph 50 of Plaintiff's First Amended Complaint,  
4 these defendants deny the same.

5           51. In answer to paragraph 51 of Plaintiff's First Amended Complaint,  
6 these defendants deny the same.

7           52. In answer to paragraph 52 of Plaintiff's First Amended Complaint,  
8 these defendants deny the same.

9           53. In answer to paragraph 53 of Plaintiff's First Amended Complaint,  
10 these defendants deny the same.

11           SECOND CLAIM: TORTIOUS INTERFERENCE WITH CONTRACTUAL

12                   RELATIONSHIP AND BUSINESS EXPECTANCY

13           54. In answer to paragraph 54 of Plaintiff's First Amended Complaint,  
14 these defendants the defendants reallege and incorporate each and every  
15 answer, allegation and denial set forth in paragraphs 1-53 above.  
16

17           55. In answer to paragraph 55 of Plaintiff's First Amended Complaint,  
18 these defendants these defendants are without knowledge or information  
19 sufficient to form a belief as to the truth of the allegations contained herein, and  
20 therefore deny the same.

21           56. In answer to paragraph 56 of Plaintiff's First Amended Complaint,  
22 these defendants these defendants are without knowledge or information  
23 sufficient to form a belief as to the truth of the allegations contained herein, and  
24 therefore deny the same.  
25  
26

1           57. In answer to paragraph 57 of Plaintiff's First Amended Complaint,  
2 these defendants deny the same.

3           58. In answer to paragraph 58 of Plaintiff's First Amended Complaint,  
4 these defendants deny the same.

5           59. In answer to paragraph 59 of Plaintiff's First Amended Complaint,  
6 these defendants deny the same.

7           60. In answer to paragraph 60 of Plaintiff's First Amended Complaint,  
8 these defendants deny the same.

9           61. In answer to paragraph 61 of Plaintiff's First Amended Complaint,  
10 these defendants deny the same.

11                           THIRD CLAIM: CIVIL CONSPIRACY

12           62. In answer to paragraph 62 of Plaintiff's First Amended Complaint,  
13 these defendants the defendants reallege and incorporate each and every  
14 answer, allegation and denial set forth in paragraphs 1-61 above.

15           63. In answer to paragraph 63 of Plaintiff's First Amended Complaint,  
16 these defendants deny the same.

17           64. In answer to paragraph 64 of Plaintiff's First Amended Complaint,  
18 these defendants deny a conspiracy and the imposition of improper permit  
19 conditions. As to the allegations contained herein concerning the "John Does,"  
20 these defendants are without knowledge or information sufficient to form a  
21 belief as to the truth of the allegations contained herein, and therefore deny the  
22 same.  
23  
24  
25  
26



1           65. In answer to paragraph 65 of Plaintiff's First Amended Complaint,  
2 these defendants deny the same.

3           66. In answer to paragraph 66 of Plaintiff's First Amended Complaint,  
4 these defendants deny the same.

### 5                           **V. PRAYER FOR RELIEF**

6           In response to plaintiff's Prayer for Relief, these defendants assert that no  
7 response is required. To the extent a response is required, the defendants  
8 deny the same.

### 9                           **AFFIRMATIVE DEFENSES**

10           1. FOR FURTHER ANSWER AND BY WAY OF AN AFFIRMATIVE  
11 DEFENSE TO PLAINTIFF'S FIRST AMENDED COMPLAINT these defendants  
12 assert that all claims alleged regarding defendants Marilyn Strickland, Lauren  
13 Walker, Ryan Mello, Jake Fey, Victoria Woodards, Marty Campbell and David  
14 Boe are absolutely immune pursuant to the doctrine of legislative immunity.  
15

16           2. FOR FURTHER ANSWER AND BY WAY OF AN AFFIRMATIVE  
17 DEFENSE TO PLAINTIFF'S FIRST AMENDED COMPLAINT, the individual  
18 defendants also assert that they are immune from suit pursuant to the doctrine  
19 of qualified immunity.

20           3. FOR FURTHER ANSWER AND BY WAY OF AN AFFIRMATIVE  
21 DEFENSE TO PLAINTIFF'S FIRST AMENDED COMPLAINT, the individual  
22 defendants assert that at all times relevant herein, they acted in good faith and  
23 on behalf of the municipal corporation, and therefore, their actions are  
24 privileged.  
25  
26

1           4.     FOR FURTHER ANSWER AND BY WAY OF AN AFFIRMATIVE  
2     DEFENSE TO PLAINTIFF'S FIRST AMENDED COMPLAINT, these defendants  
3     allege that plaintiff's allegations or claimed constitutional deprivations under 42  
4     USC § 1983 are expressly and/or implicitly premised upon a theory of derivative  
5     and/or respondeat superior liability and the defendant City of Tacoma is  
6     immune from suit on that basis.

7           5.     FOR FURTHER ANSWER AND BY WAY OF AN AFFIRMATIVE  
8     DEFENSE TO PLAINTIFF'S FIRST AMENDED COMPLAINT these defendants  
9     assert that plaintiff has failed to state a claim upon which relief can be granted.

10          6.     FOR FURTHER ANSWER AND BY WAY OF AN AFFIRMATIVE  
11     DEFENSE TO PLAINTIFF'S FIRST AMENDED COMPLAINT, these defendants  
12     assert that there is no causation between the allegations against these  
13     defendants and the damages claimed to have been sustained by plaintiff.

14          7.     FOR FURTHER ANSWER AND BY WAY OF AN AFFIRMATIVE  
15     DEFENSE TO PLAINTIFF'S FIRST AMENDED COMPLAINT, these defendants  
16     allege, on belief and to avoid inadvertent waiver, that plaintiff has failed to  
17     mitigate its damages.

18          8.     FOR FURTHER ANSWER AND BY WAY OF AN AFFIRMATIVE  
19     DEFENSE TO PLAINTIFF'S FIRST AMENDED COMPLAINT these defendants  
20     reserves the right to assert additional affirmative defenses, including  
21     counterclaims and third-party complaints, as further information becomes  
22     known.  
23  
24  
25  
26

1 WHEREFORE, having fully answered Plaintiff's First Amended  
2 Complaint, these defendants pray for judgment as follows:

3 A. That Plaintiff's First Amended Complaint be dismissed with  
4 prejudice and that plaintiff takes nothing thereby;

5 B. That these defendants be awarded costs, disbursements, and  
6 statutory attorney's fees in the defense of this matter.

7 C. For such other and further relief as the Court deems just and  
8 equitable.

9 DATED this 23RD day of January, 2015.

10 ELIZABETH A. PAULI, City Attorney

11  
12 By: 

13 JEAN P. HOMAN  
14 WSBA #27084  
15 Deputy City Attorney  
16 Attorney for Defendants

17 **CERTIFICATE OF SERVICE**

18 I hereby certify that on 1-23-15, I electronically  
19 filed, through my staff, the foregoing with the Clerk of the Court using the  
20 CM/ECF system which will send notification of such filing to Anthony L. Rafel  
21 and Tyler B. Ellrodt, Attorneys for Plaintiff.

22 

23 JEAN P. HOMAN  
24 WSBA#27084  
25 Attorney for Def. City of Tacoma  
26 Tacoma City Attorney's Office  
747 Market Street, Suite 1120  
Tacoma, WA 98402  
(253) 591-5885  
Fax: (253) 591-5755  
jhoman@ci.tacoma.wa.us